IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 16TH NOVEMBER, 2006 / 25TH KARTHIKA, 1928

CRP.No. 999 of 2004()

AGAINST THE ORDER DATED 22/07/2004 IN IA 2340/03 IN
AS.422/2003 of ADDL.DISTRICT COURT, THRISSUR

REVN. PETITIONER: RESPONDENT:DEFENDANT:

N.D.JOY, NEELAMKAVIL BHAVAN,
28/3227, 1ST CROSS CHERUPARAMBATH ROAD,
KADAVANTHRA, KOCHI-20, ERNAKULAM.

BY ADV. SMT.RANI JOY

RESPONDENTS: APPELLANT/PLAINTIFF

JINNY JOSEPH, W/O.DR.JOSEPH KUNJU,
THOTTAPPADI JUNCTION, KUTTANELLOR P.O.,
TRICHUR-14.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

C.R.P.NO. 999 OF 2004

Dated this the 16th day of November,2006

O R D E R

Consequent on allowing R.P.No.434 of 2006 the Civil Revision Petition gets restored and the order dated 24.2.2006 would not remain in force. The Civil Revision Petition was heard in detail.

2. The Revision is against the order dated 22.7.2004 in I.A.No.2340 of 2003 in A.S.No.422 of 2003, on the file of the Court of the District Judge of Thrissur. By the order impugned in the Revision, the court below allowed the application and condoned the delay of eight days in filing the appeal by the respondent herein. The judgment of the trial court was dated 9.4.2003. The respondent applied for copy of the judgment on the same date. Stamp papers were called on 11.6.2003 and they were produced on 16.6.2003. The date fixed for

appearance for receiving certified copy was 14.8.2003. Certified copy was issued on 25.8.2003. The last date for filing the Appeal was 14.9.2003. 14.9.2003 was a holiday and therefore, the respondent could file the appeal on 15.9.2003. The appeal was filed on 23.9.2003 and hence, there was a delay of eight days in filing the appeal.

3. The respondent herein tried to explain the delay in the affidavit filed by her wherein it is stated that she was laid up from 12.9.2003 to 19.9.2003. The revision petitioner opposed the application for condonation of delay and filed a counter affidavit. The averments in the counter affidavit have been read over by the learned counsel for the Revision Petitioner and the learned counsel submitted that the respondent having stated that she was laid up from 12.9.2003 to 19.9.2003, she cannot be believed to say that she prepared and signed an affidavit on 19.9.2003. This is one

of the reasons stated by the learned counsel for the petitioner to contend that the affidavit cannot be believed. It is also stated in the counter affidavit that the respondent was not laid up as alleged and that the story is a cooked up one. The same contention was raised before the lower court. The lower court considered the contentions and the affidavit filed by the respondent and taking into account the fact that the delay is only for a period of eight days, the lower court exercised its discretion to condone the delay. Learned counsel for the petitioner contended that the court below was not justified in condoning the delay of eight days, the respondent having not come before Court with clean hands. It was contended that, the averments in the affidavit are false and false to the knowledge of the respondent and hence delay should not have been condoned. Petitioner also raised a contention that every day's delay is to be explained. The petitioner submitted that the

principle is vigilantibus non dormientibus jura subveniunt, meaning thereby that the laws come to assistance of the vigilant and not the sleepy. Nobody can dispute the principle governing the law of limitation. It cannot also be disputed that Section 5 of the Limitation Act gives enough power to the Court to condone the delay in filing the appeal or application if sufficient grounds are made out. It is also well settled that in the matter of condonation of delay, the discretion exercised by the Court cannot be lightly interfered with in revision exercising the revisional jurisdiction under Section 115 of the Code of Civil Procedure.

4. The Supreme Court in the decision reported in **Collector, Land Acquisition, Anantnag** v. **Katiji and others** (AIR 1987 SC 1353) held that the Court should take a pragmatic approach and not a pedantic approach in the matter of condonation of delay.

The Supreme Court held that it is not the principle that every day's delay should be explained. It was noted therein that a litigant does not stand to gain by filing an appeal belatedly. In the view of the Supreme Court, the Court cannot presume that delay is occasioned deliberately. It was held that when substantial justice and technical considerations are pitted against each other, course of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of non deliberate delay. It was further held that it must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but it is capable of removing injustice. This decision of the Supreme Court was followed several other decisions of the Supreme Court.

5. The principles are well settled. A

litigant should not be prevented from prosecuting an appeal on the ground that there is a delay of eight days in filing the appeal. The lower court exercised its discretion and condoned the delay. There is no scope for interference in the order impugned.

The Civil Revision Petition lacks merits and it is accordingly dismissed with costs.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

CRL.M.C.NO. OF

O R D E R

September, 2006

K.T. SANKARAN, J.

C.R.P. NO. 999 OF 2004

Dated this the 24th day of February, 2006

O R D E R

By the order impugned in this revision, the court below condoned the delay of eight days in filing the appeal by the respondent herein. The judgment of the trial court was dated 9.4.2003. The respondent applied for copy of the judgment on the same date. Stamp papers were called for on 11.6.2003 and it was produced on 16.6.2003. The date fixed for appearance for the copy was 14.9.2003. 14.9.2003 was a holiday and, therefore, the respondent could file the appeal on 15.9.2003. The appeal was actually filed on 23.9.2003. The delay was sought to be explained by the respondent herein, in the affidavit filed by her, wherein she stated that she was laid up from 12.9.2003 to 19.9.2003. The court below condoned the delay. It is stated in the order passed by the court below that there is no averment in the counter statement that the petitioner was not laid up and that the statement in

her affidavit is not true. The court below exercised the discretion to allow the application for condonation of delay of eight days in filing the appeal. Cogent reasons have been stated by the court below to condone the delay. I do not find any ground to interfere under Section 115 of the Code of Civil Procedure.

The Civil Revision Petition lacks merit and it is, accordingly, dismissed. No order as to costs.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO. 999 OF 2004

O R D E R

24th February, 2006